

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 393 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHAW WALLACE AND COMPANY LTD.

Versus

STATE OF GUJARAT

Appearance:

MR RP BHATT for Petitioners
MR KP RAWAL, APP for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR PM THAKKAR for Respondent No. 3
MR KS NANAVATI for Respondent No. 4, 5, 6, 7

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 08/09/2000

ORAL JUDGEMENT

The petitioners have filed this petition under

Article 226 and 227 of the Constitution praying that the prosecution launched against the petitioners being Criminal Case No.86 of 1989 on the file of the Learned Judicial Magistrate First class, Jamjodhpur, District Jamnagar be quashed. The facts leading to this petition are as follows.

2. The petitioner No.1 is a public limited company having its registered office at Madras. The petitioner No.2 is the Divisional Manager of the Agriculture Division of the petitioner No.1 company. The petitioner No.3 was a partnership firm at the relevant time and subsequently it became a private limited company. The petitioner No.4 is the Chief Executive of Agro Chemicals Industries, the petitioner No.3. The petitioner No.3 manufactures pesticides and insecticides including the product called Monocrotophos. The product manufactured by Agro is marketed by petitioner No.1 who acts as consignment agent of Agro. Geeta Traders, the respondent No.4 is a partnership firm to whom the said product manufactured by Agro was marketed and sold by petitioner no.1. Thus, Respondent No.4 is the purchaser of the said product. On 12.09.1988, sample of the product of Batch No.26 was drawn by the Quality Control Inspector from Kisan Krishi Vikas Kendra, Respondent No.3 and it was sent to Insecticide Analyst and Assistant Entomologist, Pesticide Testing Laboratory, Junagadh. On the basis of its report dated 05.10.1988, Respondent No.2 issued a Show Cause Notice dated 24.12.1988 to petitioner no.1 and 3 to submit information as required. They gave their respective replies on 29.12.1988 and 11.01.1989. Both of them requested the Respondent No.2 to send the counter sample to Central Insecticide Laboratory for re-analysis, as provided under the Act. However, Respondent No.2 filed a complaint against the petitioners and Respondent Nos.3 to 7 in the Court of the learned Judicial Magistrate, First Class, Jamjodhpur on 14.03.1989 (Criminal Case No.86 of 1989) alleging that they had committed offence punishable under Section 3(k)(1), 17(1)(a), 18(1)(C) read with Section 29(1)(a) of the Insecticides Act. The Learned Magistrate issued process against them. On 21st March, 1990 the petitioners filed this Special Criminal Application for quashing the prosecution. Rule was issued on 23.06.1990 and further proceedings in the trial court were stayed.

3. Shri M.R. Bhatt, learned counsel for the petitioner submitted that no action was taken by the Inspector to have the sample re-tested by the Central Insecticide Laboratory and by the time they were asked to appear before the court the shelf life of the

insecticide, of which sample was taken, had already expired. The petitioners were, therefore, deprived of their valuable right of defence and since they were prejudiced, it would be abuse of the process of the court to allow the complaint to proceed further.

4. Now in the present case, it is not in dispute that the Agricultural Inspector, Jamjodhpur sent the Analysis Report to the petitioners alongwith his notice dated 24.12.1988 and the petitioner No.1 gave the reply on 29.12.1988 making a request for re-analysis by Central Insecticide Laboratory and a similar reply was given by petitioner No.3 on 11.01.1989. Thus, an application was made under Section 24(3) of the Act within the prescribed period of 28 days. According to the petitioners, the shelf life of the product expired in December, 1988 and this is not disputed on behalf of the prosecution. The learned APP showed a copy of the letter dated 13.09.1988 sent by the Agricultural Inspector to the Insecticide Analyst forwarding the sample for analysis in which the expiry date was stated to be December, 1988. The contention which the learned counsel for the petitioner has canvassed was upheld by the Supreme Court in State of Haryana vs. Unique Farmaid (P) Ltd. [(1999) 8 SCC Pg.190]. In para 12 of the said decision the Supreme Court held as follows:

"12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticide Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticide Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases the Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the Court, the shelf life of the sample had already expired and no purpose would have been served informing the Court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central

Insecticides Laboratory and in the circumstances of the case the accused have been deprived of that right, thus:, prejudicing them in the defence."

5. The Supreme Court therefore held that the High Court was right in concluding that it will be an abuse of the process of the Court if the prosecution is continued against the accused persons and the High Court has rightly quashed the criminal complaint.

6. The ratio of the said decision is squarely applicable to the facts of the present case and since the complaint was filed after expiry date of the Insecticide the accused have been deprived of their valuable right conferred on them to have the sample re-tested from the Central Insecticides Laboratory. The prosecution, therefore, deserves to be quashed on that count.

7. The petition is therefore allowed and the Criminal Case No.86 of 1989 on the file of the learned JMFC, Jamjodhpur, District Jamnagar in which the petitioners and Respondent No.3 to 7 are accused, is hereby quashed. Rule made absolute accordingly.

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